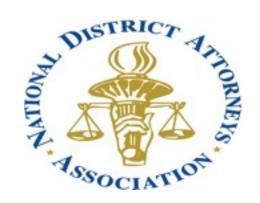
Victims with Disabilities

Rami Badawy, Senior Attorney
National District Attorneys Association
National Center Prosecution Child Abuse



Acknowledgements

- These materials have been developed with the assistance of Allison Turkel and Laura Rogers.
- Angela Downes, Senior Attorney, NDAA's National Center for Prosecution of Child Abuse
- Special thanks to Suzanna Tiapula, Director NDAA'sNCPCA

Objectives

- Rates of Victimization and Challenging the Myths
- Multidisciplinary Responses
- Facilitated Communication
- Specific Interviewing Considerations
- Going to Trial

Rates of Victimization and Challenging the Myths

AMERICANS WITH DISABILITIES ACT, 42 USC ss.12101-12213

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Federal legislation which guarantees access to education, the workplace, and public places

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- Federal legislation which guarantees access to education, the workplace, and public places
- ADA information hotline
 - 1-800-514-0301 (v)
 - 1-800-514-0383 (TDD)





People with disabilities are among the MOST VULNERABLE to abuse.



People with disabilities are among the MOST VULNERABLE to abuse.



- People with disabilities are among the <u>MOST</u> <u>VULNERABLE</u> to abuse.
- There are roughly 54 million Americans living with physical, cognitive, and emotional disabilities.







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- ▶ 1.7 times more likely to be abused (Westat, 1991)



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- ▶ 1.7 times more likely to be abused (Westat, 1991)
- ▶ 4–10 times more likely to be abused (Garbarino, 1989)
- More than twice as likely to be physically abused and almost twice as likely to be sexually abused (Tyska, 1998)





Of all children who are abused, 17.2% have disabilities



- Of all children who are abused, 17.2% have disabilities
- Of all children who are sexually abused, 15.2% have disabilities
 - Crosse, S et. Al. A Report of Maltreatment o Children With Disabilities, U.S. Dept. of Health









Sexual Abuse

- Over 90% of people with developmental disabilities will experience sexual abuse at some point in their lives
- 49% will experience 10 or more abusive incidents
 - Valenti-Hein, D. & Schwartz, L., The Sexual Abuse Interview for Those With Developmental Disabilities (1995)
- Some studies suggest 39%-68% of girls and 16%-30% of boys will be sexually abused before their 18th birthday
 - Baladerian, N., Sexual Abuse of People With Disabilities (1991)





- Study in Australia indicated people with developmental disabilities were sexually assaulted 10.7 more times than the non-disabled.
 - Davis, L., People With Mental Retardation & Sexual Abuse
 15,000 19,000 people with developmental disabilities are raped each year in the United States
 - Sobsey, D. Violence and Abuse In The Lives of People With Disabilities (1994)







- Victims with intellectual impairments are at the highest risk of abuse.
 - Sobsey, D. & Doe, T., Patterns of Sexual Abuse & Assault (1991)



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 - Sobsey, D. & Doe, T., Patterns of Sexual Abuse & Assault (1991)
- 65-90% deaf children have been sexually abused
- Deaf experience maltreatment 2.5 times more often than hearing children do.
 - Center for Abuse Prevention and Education -Deaf/Hard of Hearing Description; www.uncg.edu/ses/cae/ description.html





RISK OF ABUSE

- Domestic Violence makes it worse
 - Rates of Domestic Violence in home is higher for youth with disabilities than those without
 - 17.2% of maltreated children and youth with disabilities had domestic violence in the home.
 - Sullivan, P., Maltreatment of Children with Disabilities: Research Overview (2004 Presentation)



Disabilities

- Physical
- Psychological
- Cognitive
- Communicative
- Combination

Autism

- In general, children with autism have problems in three crucial areas of development — social skills, language and behavior
- The most severe autism is marked by a complete inability to communicate or interact with other people

Autism

- Is a severe, lifelong, pervasive developmental disorder" that occurs in 14 to 16 of every 10,000 live births
- Asbergers syndrome is a severe disorder typified by difficulties in social interaction, restricted interests, and unusual patterns of behavior

Essential elements of mental retardation:

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- Ability to be independent in the activities of daily living is not commensurate with chronological age;
- Onset of the disability is before age 18.

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 - M.A. 8.3 10.9 – accounts for 85% of people

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- Children of Deaf adults (CODAs)-hearing children born to Deaf parents who may identify with the Deaf culture.

Deaf (with a capital D)-individuals who interact with the world primarily through vision, who share a common language (ASL), and who share common experiences identified as Deaf culture

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- Deafness -the inability to hear speech without a hearing aid





Hard of hearing -mild to moderate hearing loss which allows for the use of hearing for communication in some settings

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- Hearing impaired -a stigmatizing and often derogatory term

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- Hearing impaired -a stigmatizing and often derogatory term
- Hearing Loss a generic term to describe reduced hearing acuity irrespective of severity





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- More then ½ have significant hearing impairment which falls short of deafness



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- ▶ 1.2-2 million people are classified as deaf



- 20 million people are classified as hearing impaired
- More then ½ have significant hearing impairment which falls short of deafness
- ▶ 1.2-2 million people are classified as deaf
- There is no legal definition of deaf



Short-term memory impairment

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- Lower language ability

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- Problematic abstract thinking

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- Social isolation

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- Short-term memory impairment
- Lower language ability
- Problematic abstract thinking
- Social isolation
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- Over–Accommodation/obedience*
- Desire for social acceptance*

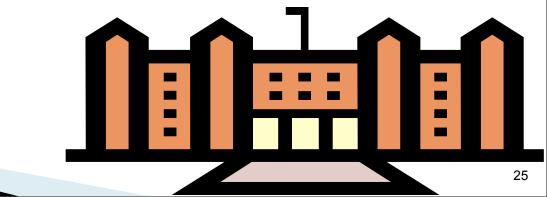
Does not mean that DD victims cannot remember their victimization

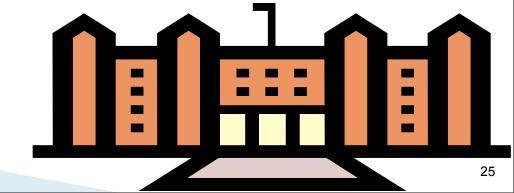
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- Does not mean that DD victims cannot remember their victimization
- They may not remember what they had for breakfast the day they were victimized
- But, can remember what crimes have been committed against them and by whom if known

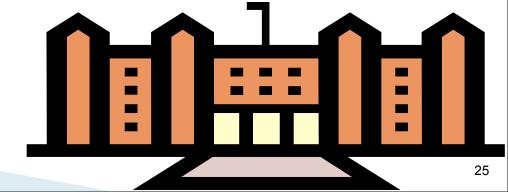
Adaptive Functioning

How individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, social, cultural background and community setting. It is influenced by factors such as education, motivation, personality characteristics social and vocational opportunities.





- Reporting
 - Only 3% of sexual abuse with people with developmental delays is reported.
 - Velenti-Hein & Schwartz (1995)
 - 80% 85% of criminal abuse in an institution is unreported







- Why are reporting rates so low?
 - Reporting impacts agencies
 - Victims do not know reporting is an option
 - People in authority often are abusers
 - Problems in identifying victims
 - · Signs of physical abuse often attributed to condition
 - Victims do not believe help is available
 - Caregivers can be perpetrators







▶ 88% of abuse occurs in the child's home

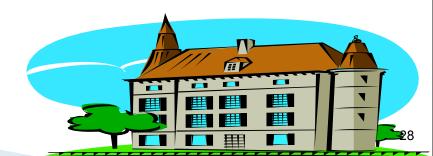


- ▶ 88% of abuse occurs in the child's home
- 4% of abuse occurs in the perpetrator's home



- ▶ 88% of abuse occurs in the child's home
- 4% of abuse occurs in the perpetrator's home
- 1% of abuse occurs in institutional settings





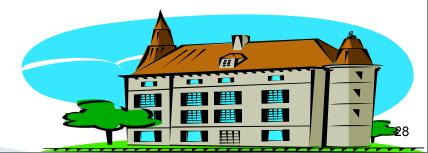
Many institutions, not just Deaf institutions, make the headlines when there is a report of abuse



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- Deaf institutions are important cultural and educational centers for the Deaf community
- Deaf institutions provide otherwise isolated children a chance to meet other d/Deaf persons
- Deaf institutions provide role models for d/ Deaf children



Is there a history of abuse at this institution



Is there a history of abuse at this institution

▶ 911 calls



- Is there a history of abuse at this institution
- ▶ 911 calls
- Child protective service records



- Is there a history of abuse at this institution
- ▶ 911 calls
- Child protective service records
- In house incident reports



- Is there a history of abuse at this institution
- ▶ 911 calls
- Child protective service records
- In house incident reports
- Goal is to apprehend the perpetrate close the institution

- Who are the perpetrators?
 - House parents
 - Older students
 - Peers
 - Milwaukee Priests





In an institutional setting many of your witnesses will be d/Deaf



- In an institutional setting many of your witnesses will be d/Deaf
- Bring an independent interpreter



- In an institutional setting many of your witnesses will be d/Deaf
- Bring an independent interpreter
- Don't use an interpreter from the institution



Why are rates of abuse so high?

Why are rates of abuse so high?

- Risk Factors Increase Likelihood of Abuse
 - Social powerlessness
 - Often people with intellectual diabilities learn not to question authority
 - Often people with intellectual disabilities think they do not have a right to refuse abusive treatment
 - Communication skills deficit
 - Decreased ability to protect oneself because of lack of instruction and resources
 - People with intellectual disabilities are more likely to give and receive affection
 - Kempton, W. & Gochrus, J.The Developmentally Disabled (1986)





- Systemic Factors Increase Likelihood As Well
 - Family isolation and stress
 - Separation from home
 - System that rewards compliance



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- Living Arrangements Increase Likel Well
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- Some disabilities impair ability to escape, avoid, or defend





Socially endorsed attitudes



- Socially endorsed attitudes
- Difficulty in Identifying Abuse
 - Physical Abuse
 - Signs of abuse attributed to disability
 - Sometimes disability causes conditions that mimic signs of abuse and lead to providers erroneously accused of abuse
 - Physical neglect may exacerbate symptoms of disability leading to other symptoms, coma, or even death
 - Victims often have multiple fears and do not disclose







- Most often known to victims
 - Family member
 - Friend
 - Staff of facility
 - Personal care person
 - Transportation person
 - Baladerian, N., Sexual Abuse of P Developmental Disabilities (1991







▶ 32% family members



- ▶ 32% family members
- 44% related to victim because of his or her disability
 - Staff, personal care, etc.



- ▶ 32% family members
- 44% related to victim because of his or her disability
 - Staff, personal care, etc.
- Abusers typically abuse as many as 70 victims without being caught





▶ 12% population are children with disabilities



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- ▶ 60% of these acquired disability post birth



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- Children are born with condition, have condition because of illness or accident, or are victims of crime



- ▶ 12% population are children with disabilities
- ▶ 60% of these acquired disability post birth
- Children are born with condition, have condition because of illness or accident, or are victims of crime
- Over 2 million children born with fetal alcohol syndrome



PROVING THE CASE

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THERE IS ALWAYS A CRIME SCENE

- THERE IS ALWAYS A CRIME SCENE
- Search the victim's statement with team for clues to locate

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 - Evidence

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 - Evidence
 - Location

Police Investigation

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 - Suspect/additional suspect

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Police Investigation

- THERE IS ALWAYS A CRIME SCENE
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 - Evidence
 - Location
 - Suspect/additional suspect
 - Additional Victims
- Corroborative information**

- Physical AbuseVideotape

- Physical AbuseVideotape
- Measurements

- Physical AbuseVideotape
- Measurements
- Standard collection

- Physical Abuse
- Vidéotape
- Measurements
- Standard collection
- Weapons/ potential

- Physical Abuse
- Vidéotape
- Measurements
- Standard collection
- Weapons/ potential
- Take photographs

- Physical Abuse
- Videotape
- Measurements
- Standard collection
- Weapons/ potential
- Take photographs
- Remove the instrumentalities
 - Wall
 - Door
 - Chair
 - Ledge
 - Air–conditioner

Sexual Abuse

- Videotape
- Measurements
- Standard collection
- Weapons/ potential
- Take photographs
- Remove the instrumentalities
 - Wall
 - Door
 - Chair
 - Ledge
 - Air–conditioner

- Sexual AbuseClothing of victim

- Physical Abuse
- Videotape
- Measurements
- Standard collection
- Weapons/ potential
- Take photographs
- Remove the instrumentalities
 - Wall
 - Door
 - Chair
 - Ledge
 - Air–conditioner

- Sexual Abuse
- Clothing of victim
- Clothing of suspect

- Physical Abuse
- Videotape
- Measurements
- Standard collection
- Weapons/ potential
- Take photographs
- Remove the instrumentalities
 - Wall
 - Door
 - Chair
 - Ledge
 - Air–conditioner

- Sexual Abuse
- Clothing of victim
- Clothing of suspect
- Bedding, carpet, towels

- Videotape
- Measurements
- Standard collection
- Weapons/ potential
- Take photographs
- Remove the instrumentalities
 - Wall
 - Door
 - Chair
 - Ledge
 - Air–conditioner

- Sexual Abuse
- Clothing of victim
- Clothing of suspect
- Bedding, carpet, towels
- Car mats, seats

- Videotape
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- Standard collection
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- Sexual Abuse
- Clothing of victim
- Clothing of suspect
- Bedding, carpet, towels
- Car mats, seats
- Weapons
- The suspect and victim FORENSIC EVIDENCE

- Videotape
- Measurements
- Standard collection
- Weapons/ potential
- Take photographs
- Remove the instrumentalities
 - Wall
 - Door
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- Sexual Abuse
- Clothing of victim
- Clothing of suspect
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- Weapons
- The suspect and victim FORENSIC EVIDENCE
- Suspects belongings

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- Clothing of suspect
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- Suspects belongings
- Lubricants/condoms

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- Suspects belongings
- Lubricants/condoms
- Sexual Devices

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- Lubricants/condoms
- Sexual Devices
- Pornography

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- Lubricants/condoms
- Sexual Devices
- Pornography
- Photos/videos

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- CPS- no warrant necessary
 - First responders
 - Cameras
 - Recording of all interviews
 - Canvassing neighbors
 - Talking to Victim's "community"
 - Neglect
 - Day in the Life

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 - Day in the Life
- Has the emergency terminated?
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- Consent Searches (authority)
 - Oral- witnessed- non-coercive
 - Written- form-signed-witnessed

- Evidence of neglect
 - Food in fridge/place to sleep/safe environment
 - Any difference of how this person treated compared to others
 - Victims Facilitating Devices** Assistive Devices
 - Who has access to benefits
 - Bed and Bed clothes

Collect grooming materials

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- Photographs/videos of victim et al

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- Collect grooming materials
- Gifts given
- Photographs/videos of victim et al
- Cameras
- Computer discs/hard drives/ e-mails/ letters

- Evidence of neglect
 - Food in fridge/place to sleep/safe environment
 - Any difference of how this person treated compared to others
 - Victims Facilitating Devices** Assistive Devices
 - Who has access to benefits
 - Bed and Bed clothes



BE PREPARED



BE PREPARED

- Before case comes to you
 - Have protocol arranged
 - Have relationships established with
 - Community
 - Experts
 - Interpreters
 - Facilities
 - Dedicated Unit?



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 - Anticipate the need for relationship building before an incident
 - Utilize existing resources

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 - CAC's etc

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 - Anticipate the need for relationship building before an incident
 - Utilize existing resources
 - CAC's etc
- Work with advocates in collaboration for best results for the victims

WHEN THE CASE LANDS ON YOUR DESK

WHEN THE CASE LANDS ON YOUR DESK

- Preferred method of communication by victim
 - Know before you talk to them
 - Helps your interview
 - Helps you put into context previous statements

Scene

- Scene
- Photographs

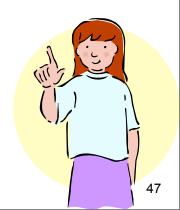
- Scene
- Photographs
- Medical

- Scene
- Photographs
- Medical
- Charts and Graphs

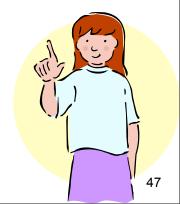
- Scene
- Photographs
- Medical
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- Scene
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- Medical
- Charts and Graphs
- Diagrams
- Videotaped Interview
- Power Point Presentation

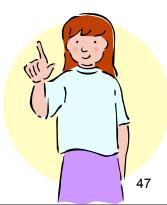


Threshold Issue: Victim's Communication



Threshold Issue: Victim's Communication

- Initial investigation should include an assessment of victim's communication skills.
 - Area of great variations
 - Particularly important in cases involving deaf victims
 - · Multiple modes of communication can be used
 - Work with experts to identify best mode of communication
 - Use uniformly throughout case



Determining Competency to Consent

Determining Competency to Consent

- Two Pronged Inquiry
 - Victim Inquiry:
 - Test routine knowledge of sexual activity
 - Specific inquiry of event at issue
 - Include whether the victim understands the nature, quality, and consequences of the sexual act.
 - Prior Sexual Conduct
 - Explore area
 - Not necessarily determinative of consent
 - Rape Shield will not necessarily protect you

DETERMINING COMPETENCY TO CONSENT

DETERMINING COMPETENCY TO CONSENT

- Percipient Witness Inquiry.
 - Education.
 - Adaptive legal functioning level.
 - Legal capacity.
 - Sexual Education.

Exculpatory Evidence

- In both inquiries, be aware of exculpatory nature of information
 - Discovery follow strict rules
 - Must disclose evidence favorable to defendant when material to guilt or punishment.
 - Brady v. Maryland, 373 U.S. 83 (1963)
 - Continuing Duty to Disclose Fed. R. Cr. Proc. 16(c)

Giglio

- Covers not only exculpatory evidence, but evidence that could be used to impeach government witnesses.
 Giglio V. US, 405 U.S. 150 (1972)
- The individual prosecutor has the duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police ... [T]he prosecutor's responsibility ... is inescapable."

THE I.Q. DETERMINATION

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- Historical Profile
 - School records
 - IEP
 - (Individual Education Plan)
 - Agency resources

THE I.Q. DETERMINATION

- Historical Profile
 - School records
 - IEP
 - (Individual Education Plan)
 - Agency resources
- Current Profile
 - Retain expert psychologist/neuropsychologist
 - Evaluation of victim

Most disabilities are discovered early in the child's life.

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- Teachers are a fantastic resource can assess basic skills.

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- Teachers are a fantastic resource can assess basic skills.
- Former testing may be useful in assessing, but the testing may be stale.





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- A good school system should do both, but don't assume a good school system
- If the Ph.D. detects a disability, an IEP team is usually assembled.
- IEP process begins with the team. Ph.D. reports the findings to the team.
- IEP is required for every child with a disability by federal law.





Use the IEP!



Use the IEP!

▶ IEP Goals can tell you a lot



Use the IEP!



- IEP Goals can tell you a lot
- Especially if the child will testify, consider what the IEP can tell you.
 - What the disability is.
 - What educational level the child is.
 - Is she working on how to put together a paragraph, or how to write her name?
 - IEP is updated every year.

^{*}Individualized Education Program





Specific experience



- Specific experience
- Familiar with particular disability



- Specific experience
- Familiar with particular disability
- Familiar with cultural requirements



- Specific experience
- Familiar with particular disability
- Familiar with cultural requirements
- Administer psychological testing





Expert Witnesses



Expert Witnesses

- Consider Expert Testimony Early.
 - Type of disability.
 - IQ Level.
 - Mental Age Level.
 - Cognitive Thinking Ability.
 - Linguistic skills and communication modes of Deaf people

Expert Witnesses

- Consider Expert Testimony Early.
 - Type of disability.
 - IQ Level.
 - Mental Age Level.
 - Cognitive Thinking Ability.
 - Linguistic skills and communication modes of Deaf people
- May or may not have specific experience with the victim in question.



Define particular disability



- Define particular disability
- Characteristics of disability



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- Vulnerabilities of a persons with intellectual disabilities
 - Deference to authority figures!



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- Vulnerabilities of a persons with intellectual disabilities
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- Particulars of examination conducted



- Define particular disability
- Characteristics of disability
- Vulnerabilities of a persons with intellectual disabilities
 - Deference to authority figures!
- Particulars of examination conducted
- Current I.Q. level/mental age



SCHOOL PSYCHOLOGIST



SCHOOL PSYCHOLOGIST

Explain special education system



SCHOOL PSYCHOLOGIST

- Explain special education system
- **IEP**



SCHOOL PSYCHOLOGIST

- Explain special education system
- **IEP**
- Victim's personal history







Use your child abuse protocol



- Use your child abuse protocol
- MDT



- Use your child abuse protocol
- MDT
- Consider videotaping



- Use your child abuse protocol
- MDT
- Consider videotaping
- Do homework about cognitive funcommunication styles, and phobias
 - Prior to interview
 - in depth conversation with caregiver

Forensic Interview/Interviewing

- Question types
 - Yes/no ... particularly problematic
 - Concrete and immediate topics pose less risk
 - Interview instructions should include "I don't know" as an option ...
 - Multiple choice can be helpful
 - Exception for ASD, echolalic speech characteristics
 - Repeated questioning may be problematic





Closed Circuit Television



- Closed Circuit Television
- Courtroom Configuration



- Closed Circuit Television
- Courtroom Configuration
- Presence of Support Person



- Closed Circuit Television
- Courtroom Configuration
- Presence of Support Person
- Use of a Comfort Item



- Closed Circuit Television
- Courtroom Configuration
- Presence of Support Person
- Use of a Comfort Item
- Mandatory Breaks



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- Child-friendly Oath



- Closed Circuit Television
- Courtroom Configuration
- Presence of Support Person
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- Mandatory Breaks
- Restrictions on Language and Tone of Voice
- Child-friendly Oath
- Defense counsel to remain seated or at podium



Motions/Briefs

- STATE'S MOTION TO ALLOW PARENTS IN THE COURTROOM AS SUPPORT PERSONS
- MOTION TO EXCLUDE TESTIMONY OF DEFENSE EXPERT ON THE ISSUES OF MEMORY AND SUGGESTIBILITY, PROFILE EVIDENCE, AND INTERVIEW TECHNIQUES
- STATE'S MEMORANDUM ON ADMISSIBILITY OF OTHER ACTS EVIDENCE IN SEXUAL ABUSE CASE
- STATE'S TRIAL BRIEF: ASSORTED ISSUE
 - Competency to Testify
 - Use of Colposcope
 - Testimony by Expert at Trial

Anticipating the Defense

- Attack the Victim ...
- Incompetent to Testify
- Interview was Tainted
- Credibility of the Victim



1. Competency to Testify



- 1. Competency to Testify
- 2. Oath Requirements



- 1. Competency to Testify
- 2. Oath Requirements
- 3. Disqualifying a Witness





Establish competency

- Establish competency
- Personalize victim

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- Personalize victim
- Examine daily routine

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- Personalize victim
- Examine daily routine
- Establish incompetency to consent

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- Detail criminal conduct

- Establish competency
- Personalize victim
- Examine daily routine
- Establish incompetency to consent
- Detail criminal conduct
- Victim's attachment to defendant

Analogize to chronologically aged child

- Analogize to chronologically aged child
- Dispel antiquated stigmas

- Analogize to chronologically aged child
- Dispel antiquated stigmas
- Create sympathy

- Analogize to chronologically aged child
- Dispel antiquated stigmas
- Create sympathy
- Establish credibility



Witness Order



Witness Order

- Order.
 - Start strong: maybe victim not first
 - Educate jury before victim takes the stand





DEFINING THE THEME



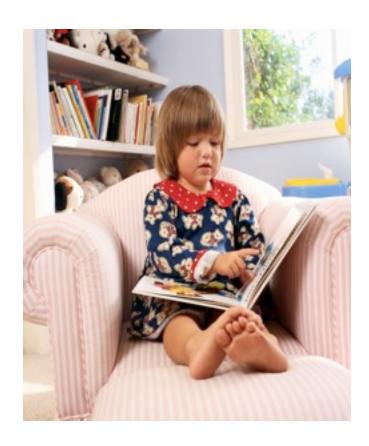
DEFINING THE THEME

- Outline the Facts
 - Legal facts
 - Emotional facts
 - Story facts



DEFINING THE THEME

- Outline the Facts
 - Legal facts
 - Emotional facts
 - Story facts
- Determine the Theme







1. Defining the Theme



- 1. Defining the Theme
- 2. Defining the Victim



- 1. Defining the Theme
- 2. Defining the Victim
- 3. Voir Dire



- 1. Defining the Theme
- 2. Defining the Victim
- 3. Voir Dire
- 4. Opening Statement



- 1. Defining the Theme
- 2. Defining the Victim
- 3. Voir Dire
- 4. Opening Statement
- 5. Witness Testimony



- 1. Defining the Theme
- 2. Defining the Victim
- 3. Voir Dire
- 4. Opening Statement
- 5. Witness Testimony
- 6. Closing Argument



TESTIFYING AT TRIAL

- General Linguistic Tips
 - Start with easy questions, try to put her at ease
 - Short sentences –No compound sentences
 - Signal topic changes
 - Use victim's words, simple words
 - Avoid measurements, distances and time questions
 - Literal interpretations***(mouth example)
 - No legal terms
 - Avoid pronoun use
 - Avoid accusatory questions





- Standard Sexual Abuse Questions
 - Delayed reporting
 - Inconsistent/recanted disclosure
 - Credibility issues
 - Circumstantial evidence issues
 - Inherent prejudices and biases
 - Explicit content



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- Legal Issues
 - Consent
 - Competency



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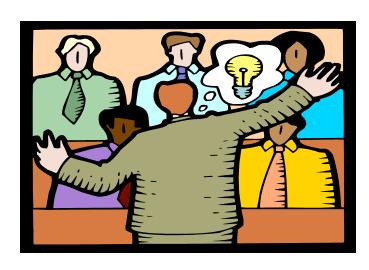


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- Credibility
- Victimization

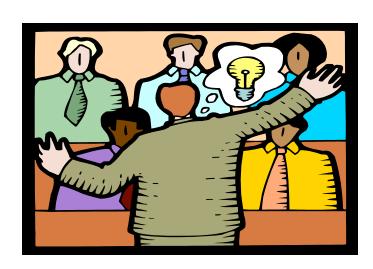




Develop the theme



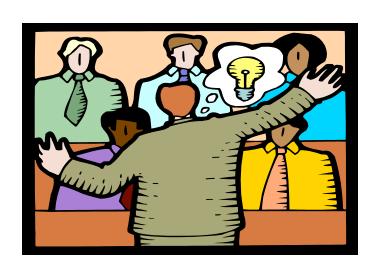
- Develop the theme
- Define the facts

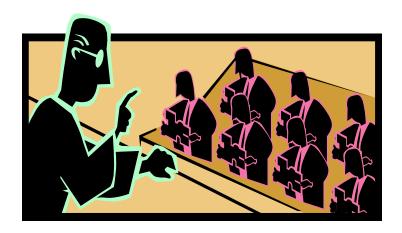


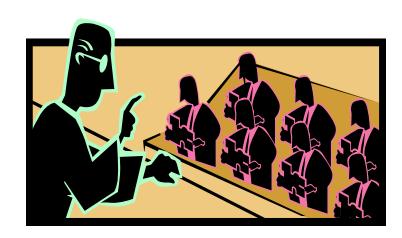
- Develop the theme
- Define the facts
- Establish framework for testimony



- Develop the theme
- Define the facts
- Establish framework for testimony
- Humanize the case







Write prior to trial—modify throughout



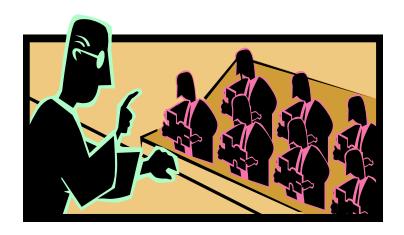
- Write prior to trial—modify throughout
- Reinforce theme



- Write prior to trial—modify throughout
- Reinforce theme
- Define charges



- Write prior to trial—modify throughout
- Reinforce theme
- Define charges
- Enhance victim's credibility



SUGGESTED READING

- American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).
- American Prosecutors Research Institute, INVESTIGATION AND PROSECUTION OF CHILD ABUSE (3rd ed. 1999).
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- Lyon, T.D. & Saywitz, K.J. (1999) Young and Maltreated Children's Competence to Take the Oath. Applied Developmental Science, Vol. 3, No. 1, 16-27.

SUGGESTED READING

- Marge Elder (hearing), Abused Because of Deafness?, Moving Forward News Journal, Vol 2, No. 5 (1993).
- Sharon M. Ridgeway, Abuse and Deaf Children: Some Factors to Consider, Child Abuse Review, Vol 2 (1993)

Contact Information

- Rami Badawy
- Senior Attorney
- ▶ 703-519-1648
- rbadawy@ndaa.org

